

D.T.E. 02-TD-1

Appeal of Robin McPartland from a Decision from the Director of the Department's
Transportation Division Denying her Application for Renewal of her School Bus Certificate.

APPEARANCES: Robin L. McPartland
10 Valley Hill Drive
Worcester, MA 01609
Appellant

Ronald Wheatley, Esq.
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
FOR: TRANSPORTATION DIVISION
Appellee

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 11, 2002, Robin L. McPartland (“Appellant”) filed an appeal pursuant to the provisions of G.L. c. 25, § 12F with the Department of Telecommunications and Energy (“Department”) regarding the denial by the Director of the Department’s Transportation Division (“Transportation Director” or “Appellee”) of the Appellant’s application for renewal of the her school bus driver certificate. The Department docketed this matter as 02-TD-1.

After proper notice, the Department held a hearing on December 11, 2002. At the hearing, the Appellant testified on her own behalf. The evidentiary record consists of three exhibits offered by the Appellee and a transcript of the December 11, 2002 hearing.

II. BACKGROUND

The Appellant has been employed as a school bus driver for 17 years (Tr. at 5). During the summer of 2002, the Appellant filed with the Transportation Director an application for renewal of her school bus driver certificate, which expired on August 10, 2002.¹ The Appellant’s renewal application, however, appeared to the Transportation Division personnel to contain a forged signature of a school bus driver instructor (Exh. TD-1). Therefore, the Transportation Director advised the Appellant that her school bus driver certificate would not be renewed (id.). Further, the Transportation Director informed the Appellant that she had the right to request an informal hearing regarding this decision (id.).

¹ 220 C.M.R. § 155.02(10)(a) provides that all school bus driver certificates expire on the anniversary of each operator’s date of birth.

At the Appellant's request, the Transportation Director held an informal hearing on August 20, 2002. At this hearing, the Appellant made the following admissions: she falsified the instructor's signature on her renewal application; her employer, Laidlaw Transit, Inc. ("Laidlaw"), terminated her employment on March 20, 2002, after the Appellant tested positive for alcohol use; her subsequent employer, Atlantic Express of New England, Inc. ("Atlantic Express"), terminated her employment on May 2, 2002, for failure to report for drug and alcohol testing after the school bus she was operating was involved in an accident; and her next employer, R.H. White Bus Company, Inc. ("R.H. White"), terminated her employment on May 16, 2002, after a high school athletic director reported that she had a full, unopened bottle of vodka in a trash bucket next to her while driving a school bus (*id.*). Based on this information, the Transportation Director, in a letter dated September 4, 2002, again advised the Appellant that her school bus driver certificate would not be renewed (*id.*).

On September 16, 2002, the Appellant stated that she would appeal the Transportation Director's decision ("Appeal"). The Appeal, however, did not state the grounds for appeal as required by 220 CMR § 250.06. The Appellant amended her Appeal and provided further information on October 11, 2002. After proper notice, the Department held a hearing at our offices on December 11, 2002.

III. POSITION OF THE APPELLANT

At the Department's formal hearing on December 11, 2002, the Appellant repeated under oath the admissions she made at her hearing on August 20, 2002 (Tr. 6-8,16-17). She explained that she falsified her renewal application because she was afraid she was going to

lose her job (id. at 16-17) . The Appellant testified that she was embarrassed to call her former employer to sign the application because after she failed the drug and alcohol test, Laidlaw wouldn't allow her to drive home in her own car (id.). She also attributed the blood alcohol level of .03 that Laidlaw obtained to an over-the counter medication she consumed the previous evening (id.). Further, the Appellant testified that she did not report for a post-accident drug and alcohol test administered by her subsequent employer Atlantic Express because she needed to take care of her husband and was unaware that she was required to report immediately for the drug and alcohol test (id. at 11). Finally, the Appellant testified that her next employer, R.H.White, found an unopened bottle on her school bus because she bought the bottle as a gift, while waiting for a group of students to complete an athletic event (id. at 6-7). The Appellant claimed "if I were going to drink, I was at a bar and could have drank [sic] there. Or I could have opened the bottle of alcohol, if that were my intent, but it certainly was not" (id. at 8). The Appellant added that "the safety of the students has always been the first priority" (id. at 9).

IV. ANALYSIS AND FINDINGS

A. Standard of Review

The Department and the Registry of Motor Vehicles ("Registry") exercise concurrent authority over the issuance of school bus drivers' certificates. The Department issues school bus driver certificates pursuant to its general authority for licensing of operators of vehicles for hire, G.L. c. 159A § 9, and regulations at 220 C.M.R. § 155.02(10). The authority of the Registry to issue school bus driver certificates is found in G.L. c. 90, § 8A. Pursuant to an

agreement between the Department and the Registry,² the Department now is the sole agency issuing and annually renewing school bus driver certificates.

General Laws c. 90, § 8A and 220 C.M.R. § 155.02(10)(d) specifically require that an applicant for a school bus driver certificate or annual renewal must establish that he has satisfactorily completed the driver training program and must present a record that passes muster under the Criminal Offender Record Investigation system. General Laws c. 90, § 8A states that upon application for renewal of a school bus driver certificate, the registrar shall require evidence of physical fitness and may require evidence of continuing good character. The registrar may suspend or revoke any license granted under § 8A authority for a violation of any of the provisions of Chapter 90. The registrar may also suspend or revoke on other reasonable grounds or where, in his opinion, the licensee is either physically or morally unfit for certification.

B. Analysis and Findings

General Laws c. 90, § 8A safeguards children traveling to and from school by permitting the review of the character of an applicant for a school bus driver certificate. In the present matter, the record indicates that, by her own admission, the Appellant falsified her renewal application (Tr. at 16-17). Such falsification is a serious matter and may be subject to

² Memorandum of Understanding of March 13, 1993.

the penal provisions of G.L. c. 268, § 6.³ Therefore, the Appellant's falsification of the renewal application alone is reasonable grounds for rejection of her renewal application.

In addition, the record demonstrates that the Appellant was terminated by three separate bus companies for incidents involving the suspicion of inappropriate use of alcohol. In one of these terminations, her employer Laidlaw refused to allow her to drive home after failing a drug and alcohol test. The Appellant has not offered any support for her assertion that the alcohol usage or presence involved in each of the incidents was inconsequential. The Department has only her word that she would not endanger the lives of children.

There is substantial evidence to conclude that the Appellant falsified of her renewal application and that on three occasions, she was terminated from employment as a school bus driver in circumstances involving the warranted suspicion of inappropriate use of alcohol. The Department accordingly determines that the Appellant does not possess the continuing good moral character required by statute. Therefore, the Department determines that the Director acted properly in refusing to renew the Appellant's school bus driver certificate. We affirm the Director's decision.

³ G.L. c. 268, § 6 provides penalties for the wilful making of false statements to the Department.

V. ORDER

Accordingly, after due notice, hearing and consideration it is

ORDERED: That the appeal of Robin L. McPartland from the decision of the Director of the Department of Telecommunications and Energy's Transportation Division denying her application for renewal of her school bus driver certificate, is DENIED.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).